

(2005) 04 BOM CK 0074

In the Bombay High Court

Case No : Writ Petition No. 3960 of 2002

Lourdes Chandrahas Shetty (Mrs.) and Another	APPELLANT
Vs	
Vishal Konkan Co-operative Housing Society Ltd. and Others	RESPONDENT

Date of Decision : 12-04-2005

Acts Referred:

Citation : (2005) 3 ALLMR 881 : (2005) 4 BomCR 41 : (2005) 3 MhLj 320

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : V.M. Joshi, instructed by A.S. Desai, for the Appellant; O. Menezes and I.S. Mecwan for respondent Nos. 1 and 5, R.S. Ghadge, for respondent Nos. 6 and 7 and S.N. Gawade, AGP for respondent Nos. 2 to 4 and 8, for the Respondent

Final Decision : Allowed

Judgement

D.G. Deshpande, J.—Heard advocates for the petitioners and respective respondents. The facts giving rise to this petition are as under :--

Respondent No. 1 is the Co-op. Housing Society. Petitioner No. 1 was the chairman and petitioner No. 2 was the secretary of the society. They were legally bound to convene General Body Meeting, therefore, they called General Body Meeting of respondent No. 1/society for the year 2000-01 on 4-8-2001. Accordingly, the meeting was held on that day. Subject on the Agenda was discussed but the meeting could not proceed further because of chaotic condition or situation created by some members and, therefore, the meeting was called off. Two letters thereafter were sent by the petitioners to respondent No. 2 to depute somebody so that meeting could be successfully or peacefully held. But no steps were taken by respondent No. 2. Thereafter the meeting was called by the petitioners on 10-11-2001. All the remaining subjects were discussed on that day.

2. However, thereafter respondent No. 2 initiated action against the petitioners u/

s 78 of the Maharashtra Co-operative Societies Act (hereinafter referred to as "the Act"), and they disqualified u/s 75(5) of the Act for not holding the meeting within stipulated period. The petitioners challenged this order before the Divisional Joint Registrar. But they were not successful. They went to the Minister. There also the order was against them and, hence this petition.

3. The counsel for the petitioners contended that as required by this Act, it was legal responsibility of the petitioners to convene a meeting before statutory period. General Body Meeting was, therefore, called by the petitioners on 4-8-2001 and, there is no grievance of any of the party in that regard, nor action taken is in respect of that meeting. However, on that day only one subject could be discussed and then the meeting was disturbed and it had to be called off. Thereafter subsequent meeting was held on 10-11-2001. In the meantime the petitioners had written letters to respondent No. 2 to intervene the matter and to send a representative so that the meeting could be held peacefully. Then accordingly the meeting was held on that day and all the subjects were discussed and the meeting was concluded.

4. Therefore, in this background of the matter, the petitioners contended that the order disqualifying the petitioners as passed by respondent No. 2 and confirmed by subsequent two authorities was illegal and it was liable to be set aside. My attention was drawn in this regard to the Section 75(5); Section 78, Rule 60(8) and certain Authorities by both the advocates. No other provision of the Act was quoted, cited or relied upon and, therefore, it has to be seen, whether the order of disqualification was just, proper and legal.

5. Section 75 of the Act is about Annual General Meeting. Sub-section (1) of Section 75 provides that; "Every society, shall within a period of three months next after the date fixed for making up its accounts for the year under the rules for the time being in force, call a general meeting of its members," Sub-section (5) lays down that, "If default is made, in calling a general meeting within the period or, as the case may be, extended period, prescribed under Sub-section (1), or in complying with Sub-section (2), (3) or (4), the Registrar may by order, declare any officer or member of the committee..... and who without reasonable excuse failed to comply with any of the aforesaid sub-sections disqualified for being elected and for being any officer or member of the committee for such period not exceeding three years....."

6. Section 78 of the Act gives Power of removal of committee or member thereof to the Registrar. It lays down that if, in the opinion of the Registrar, the committee of any society or any member of such committee makes default, or is negligent in the performance of the duties imposed....., the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections, if any, within 15 days from the date of receipt of notice and after consultation with the federal society to which the society is affiliated; by order --

"(b) remove the member and appoint any person as member of such committee in his place, or direct the society to elect or appoint a member in his place, for the remainder of the term of office of the member so removed."

7. Rule 60 of the Act is in respect of General Meeting of the Society and, Sub-rule (8) of Rule 60 provides as:--

"(8). If all the business in the agenda cannot be transacted on the date on which the general meeting is held, the meeting may be postponed to any other suitable date not later than 30 days from the date of meeting as may be decided by the members present at the meeting."

8. In view of this legal provisions, the counsel for the petitioners contended that firstly, there was no default committed by the petitioners in convening the meeting i.e. AGM. The meeting was convened within the period prescribed i.e. on 4-8-2001. There is no objection of anybody about that meeting. But on that day only one subject could be discussed and subsequent meeting could not proceed because of the disturbance created, and, therefore, the meeting had to be called off and, therefore, so far as first meeting is concerned, the petitioners had not committed any default. According to him, Sub-section (5) of Section 75 of the Act could be invoked only if there is default in calling the general meeting within the period prescribed by the Act. Since that meeting dated 4-8-2001 was held within time and there was no objection about that, the petitioners had not incurred any disqualification under Sub-section (5) of Section 75 of the Act.

9. The counsel for the petitioners further argued that the meeting called on 4-8-2001 was in fact held. It could not be completed on that day and, the subsequent meeting has to be held on 10-11-2001. This subsequent meeting, according to the counsel for the petitioners, was not an adjourned meeting nor a postponed meeting. Therefore, according to him, Sub-rule (8) of Rule 60 of the Act did not apply.

10. Thirdly, he contended that after the first meeting dated 4-8-2001 the petitioners had written two letters to respondent No. 2 calling for their help and assistance in the manner reflected in the letters. But respondent No. 2 did not take any action about those letters nor even replied them and, therefore, the petitioners had to convene a meeting on 10-11-2001 and it was successfully and completely held on that day. Therefore, according to the petitioners, there was no case for disqualifying the petitioners as per the impugned orders.

11. Further the counsel for the petitioners contended that if at all the petitioners were to be disqualified, then consultation with federal society as required by Section 78 was a must and without consultation Registrar could not pass the impugned order. When questioned, the counsel for the petitioners produced documents that respondent No. 1 society is affiliated to the federal society and no dispute in this regard at least was raised by any of the advocates of the respondents, nor the AGP made any contrary statement. The counsel for the petitioners contended that admittedly there was no consultation by the Registrar

with the federal society before passing the impugned order and, therefore, that order was bad in law and liable to be set aside. The counsel for the petitioners also relied upon certain authorities in this regard, but mainly upon the judgment of Division Bench of this Court given by Chief Justice Chainani and Justice Gokhale reported in 1966 C.T.D.7, *Jagannath Badhu Budgujar v. The District Deputy Registrar, Co-op. Societies, Dhulia and Anr.* In that case Section 75(5) was involved. The petitioner before the High Court was the Chairman of the Managing Committee. He was required to call a meeting of its members u/s 75. Accordingly the general meeting of the Bank was called on 29th September, 1963, but it was not held on that day because necessary number of members for constituting a quorum was not present. The meeting was therefore adjourned and no date was fixed. On 26th October, 1963 the Managing Committee of the Bank met to consider the situation. On 13th November, 1963 the District Deputy Registrar issued a notice, to all the members of the managing committee to show cause why they should not be disqualified from being members of the managing committee u/s 75(5) of the Act for not holding annual general meeting within the specified period. On 15th November, 1963 the managing committee held a meeting and decided to convene the adjourned meeting on 27th November, 1963. However, ultimately an order came to be passed under Sub-section (5) of Section 75 of the Act disqualifying the petitioner. The petitioner made representation to the Government. But that was rejected. Hence the petitioner moved the High Court. The Division Bench considered entire Section 75 and found that there was no dispute that the annual general meeting was called within the period and held on 29th September, 1963, but it had to be adjourned and no business could be transacted for want of a quorum. The future date for the adjourned meeting was not fixed on that day. The District Deputy Registrar had issued show cause notice and the default consisted in failing to fix the date for holding the adjourned general meeting and in convening such a meeting. The question before the Division Bench was, whether such a default, would attract the provisions of Sub-section (5) of Section 75 of the Act. According to the petitioner there was no default in calling the general meeting as required by Section 75. The learned AGP, however, contended that Sub-section (5) of Section 75 would apply when there is a failure to call the adjourned general meeting. The Division Bench held that the language of Sub-section (5) does not, however, support this argument. It provides for a penalty only when default is made in calling a general meeting within the period prescribed under Sub-section (1) and, Sub-section (1) does not prescribe any period within which adjourned general meeting has to be held. The Court also found that there is nothing in the Act or in the Rules or in the bye-laws which lays down the period within which adjourned general meeting must be held.

12. In that judgment the Court has also considered Sub-rule (10) of Rule 60 which states that if the general meeting cannot be held for want of quorum, it shall be adjourned to a later hour on the same day as may have been specified in the notice calling the meeting or to a subsequent date not earlier than seven

days and at such adjourned meeting the business on the agenda of the original meeting shall be transacted whether there is a quorum or not. The Division Bench found that this Sub-rule (10) provides that the adjourned meeting shall not be held within seven days unless it is specified in the notice calling the meeting but it does not lay down any period within which the adjourned meeting must be held. The Court found that the conduct of general meeting is, however, in the hands of the person who presides over the meeting and, in the absence of any provision to the contrary, it was the duty of the presiding authority to fix the date of the adjourned meeting at the time when the meeting was adjourned for want of quorum. The petitioner committed default in this regard i.e. not fixing the date of the adjourned meeting. However, action for such a default cannot be taken under Sub-section (4) of Section 75 of the Act. Consequently, the order of the District Deputy Registrar was set aside.

13. Counsel for the petitioners, therefore, contended that this judgment squarely applies to the facts of the present case. No default was committed by the petitioners in not convening 1st Annual General Meeting on 4-8-2001 and if the business on that day could not be transacted then in the absence of any statutory provision either under the Act or under the Rules, regarding the period within which the adjourned meeting was to be held, the petitioners could not be disqualified u/s 75(5).

14. The petitioner's counsel also urged that the petitioners were disqualified u/s 78 of the Act and when Section 78 lays down that there shall be consultation with the federal society before passing the order and when admittedly there was no consultation, the action was bad in law i.e. the impugned order is bad in law.

15. So far as this aspect of the matter is concerned, the counsel for the respondents contended that referring to Section 78 to the impugned order by the Registrar was a mistake but admittedly, from the order it was clear that it was not an order u/s 78 of the Act. Section 78 was only referred in the title of the show cause notice and in the order but action was taken u/s 75(5). He, therefore, contended that quoting a wrong Section in the show cause notice or in the order could not bring the order under the purview of Section 78 of the Act and, therefore, consultation with the federal society was not necessary.

16. So far as show cause notice is concerned, it is at Exhibit F to the petition. It is dated 8-2-2002. In the Reference Column at Sr. No. 4 Sections 75 and 78 have been referred and, in the notice itself it is stated that u/s 75(1) of the Act the annual general meeting was required to be convened before 15th August and since the meeting was not so called, there was breach of Section 75(1) of the Act and, since they have failed to perform their statutory and legal duties in that regard, why the petitioners should not be disqualified u/s 78 of the Act. Then order of the Deputy Registrar is at Exhibit H. In that order it is stated that the show cause notice was given to the petitioners u/s 75(5) read with Section 78 of the Act. Their say was considered and, since the explanation was not acceptable, the petitioners were disqualified u/s 75(5) read with Section 78 of the Act. In the

appeal before the Divisional Joint Registrar, the Divisional Joint Registrar appears to have come to different conclusion. In para 6 he has held that he was of the opinion that though the office bearers have convened Annual General Meeting on 4-8-2001 by issuing notice dated 23-7-2001 there is no clear 15 days notice sent to the members. Further the adjourned meeting ought to have convened within 30 days as contemplated under Rule 60(8) of the Act but failed to do so. The appellants i.e. the petitioners had committed default u/s 75(1) and, therefore, the order of disqualification is proper. The Divisional Joint Registrar, therefore, upheld the order of the Deputy Registrar and held in para 2 that the impugned order dated 14-3-2002 issued by the Deputy Registrar Co-op. "R" Ward Mumbai u/s 75(5) read with Section 78 of Maharashtra Co-operative Societies Act, 1960 is hereby confirmed.

17. The counsel for the respondents, therefore, contended that in all these three material documents, though there is a reference to Section 78 of the Act, the order was and could not be called as an u/s 78.

18. As against this, the counsel for the petitioners contended that if at all an order u/s 75(5) is to be passed, that has to be passed u/s 78 only and, therefore, consultation was mandatory. I am not at all in agreement with this proposition. Section 78 is general power of removal for whatever be the cause or default. Section 75(5) is special power regarding holding of annual general meeting. Therefore, Section 75 is totally independent section and the order of disqualification can be passed u/s 75 without reference to or without referring to Section 78.

19. It is true that in all the aforesaid orders there is a reference to Section 78. That is obviously wrong and, the order is u/s 75(5). Therefore, the consultation with the federal society is not necessary and the order cannot be set aside on that count i.e. for want of consultation.

20. However, the other contention of the petitioners is required to be accepted. There was admittedly no default committed by the petitioners in holding the annual general meeting within the stipulated period on 4-8-2001. There is no grievance in that regard by the members of the respondents as already held by me. The findings of the Divisional Joint Registrar that there was no sufficient 15 days notice are uncalled for. Because that was not a dispute before him and no such submission was made before me by any of the advocates in that regard, i.e. regarding want of proper and adequate 15 days notice. Therefore, what is clear is that, so far as holding of annual general meeting on 4-8-2001 is concerned, the petitioners have not committed any default. The meeting could not be completed on that day because of the disturbance and, in that regard also no contradictory submission was made by any of the advocates for the respondents. Rule 60(8) which was relied upon by the counsel for the respondents is again reproduced as under :--

"Rule 60(8):-- If all the business in the agenda cannot be transacted on the date

on which the general meeting is held, the meeting may be postponed to any other suitable date not later than 30 days from the date of meeting as may be decided by the members present at the meeting."

A perusal of the aforesaid Rule shows that the Rule is very clear and, if as per that Rule if all the business in the agenda cannot be transacted on the date of annual general meeting, the meeting may be postponed to any other suitable date not later than 30 days from the date of meeting as may be decided by the members present in the meeting.

21. The wording of Sub-rule (8) of Rule 60 clearly shows that the said Rule does not apply to the facts of the present case. Firstly because the meeting held on 4-8-2001 came to be adjourned because of disturbance and, secondly Sub-rule (8) of Rule 60 requires that next suitable date of the meeting has to be fixed as decided by the members present at the meeting. If the members present were not in a mood to allow the business to be completed smoothly, then there was nobody to fix the date and, secondly, Sub-rule (8) does not give any power to the petitioners i.e. the chairman and secretary to fix the date of their choice. The date has to be fixed as decided by the members present. It is true that the Division Bench's judgment of Chief Justice Chinnai and Justice Gokhale has referred to Sub-rule (10) of Rule 60, as rightly argued by the counsel for the respondents, it applies to general meeting which could not be held for want of quorum. In this case that question does not arise. Therefore, ultimately what becomes clear is, as held by the Division Bench, there is no statutory provision either in the Act or in the Rule fixing the time limit within which the adjourned meeting is to be held. The petitioners had held annual general meeting within the statutory period and had to comply to Sub-section (1) of Section 75. They had written letters to the Registrar seeking their intervention for holding the adjourned annual general meeting. There was no response from the registrar. Thereafter the meeting was held and successfully completed and, therefore, in this view of the matter, all the impugned orders are required to be set aside. I, therefore, pass the following order:--

:ORDER:

The Writ Petition is allowed and the orders dated 14-3-2002, 3-4-2002 and 1-7-2002 passed by the respondent Nos. 2, 3 and 4 respectively are quashed and set aside.

Costs of the petition quantified at Rs. 5000/- which all the contesting respondents shall bear.